103

No. 324. 80

Brief of Green for D. & E.

Office Supreme Court U. S.
FILED
NOV 20 1899
JAMES H. McKENNEY,
Clerk.

Filed Nov. 20, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 324.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,

vs.

WIRT ADAMS, State Revenue Agent.
Defendant in error.

SUPPLEMENTAL BRIEF ON MOTION TO DISMISS, AND BRIEF ON THE MERITS, FOR DEFENDANT IN ERROR.

MARCELLUS GREEN,
Attorney for defendant in error.

Supreme Court of the United States.

OCTOBER TERM, 1899.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,

vs.

WIRT ADAMS, State Revenue Agent,
Defendant in error.

SUPPLEMENTAL BRIEF ON MOTION TO DISMISS, AND BRIEF ON THE MERITS, FOR DEFENDANT IN ERROR.

ON THE QUESTION OF JURISDICTION.

It is stated in brief of argument for plaintiff in error, in opposition to the motion to dismiss this appeal for want of jurisdiction in this court, that the third and fourth pleas to the declaration, "sets up the Federal question by alleging that under the charter, its property was exempt from municipal taxation; that the power to make such exemption had been judicially recognized and declared; and that such exemption was a part of the charter contract of the defendant, as between it and said state". That is true, and is all the material averments of these pleas, and they do not raise any question giving jurisdiction.

The Federal question, by which the motion

is sought to be defeated, is under the contract clause of Article 1, Section 10, of the Constitution of the United States, prohibiting the States from passing laws impairing the obligation of contracts.

The pleas set up the contract and the power to make it, but wholly fail to aver, or set up in any manner, that there was ever any law enacted subsequent to the act of incorporation, that impaired the charter.

On the other hand the fourth plea—the only one relied upon as presenting a Federal question, concludes with the distinct averment, that: "Said charter of exemption still stands *unimpaired and not in any way modified by said State Legislature*".

To give this court jurisdiction by writ of error to a State court, it must appear by *the record* that a Federal question was raised, and no where in the record is any subsequent legislation shown that impaired any charter right.

New York and New England R. R. Co. vs. Woodruff, 153 U. S., 689.

Kipley vs. Illinois, 170 U. S., 182.

Axley Stove Co. vs. Butler Co., 166 U. S., 648.

Levy vs. San Francisco, 167 U. S., 175.

Capital National Bank vs. Cadiz Bank, 172 U. S., 425.

Jurisdiction cannot arise from inference, but

only from averments so distinct and positive as to prove it beyond question that the party intended to assert a Federal right.

Kipley vs. Illinois, 170 U. S., 182.

Counsel for plaintiff in error, undertake to set up and *show in their brief* certain legislation, that *does not appear in the record* upon which they rely to raise the Federal question. This matter shown by their brief, being largely amendatory acts to various municipal charters, but which do not enlarge their previously existing taxing power, and so could not have been, with effect, pleaded or offered in evidence as impairing the charter obligation. In their effort to supply this deficiency, counsel seem to have overlooked the fact that under the rulings of this court: "Resort cannot be had to the expedient of imparting into the record the legislation of the State as judicially known to its courts, and holding the validity of such legislation to have been drawn in question, and a decision necessarily rendered thereon in arriving at conclusions upon matters actually presented and considered. A definite issue as to the validity of the statute or the possession of a right must be distinctly *deduceable from the record* before the State court can be held to have disposed of such Federal question by its decision".

Powell vs. Brunswick Co., 150 U. S., 433.

Louisville & Nashville Ry. Co. vs. Louisville, 166 U. S., 715.

This case only presents a controversy between citizens of the State, as to the construction of a State statute, unimpaired by subsequent laws, and this does not raise a Federal question.

Turner vs. Wilkes Co., 173 U. S., 161.

BRIEF ON THE MERITS.

The eighth section of the Act incorporating the Yazoo & Mississippi Valley Railroad Company is as follows: "Be it further enacted, that in order to encourage the investment of capital the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will or will not impose thereon, it is hereby declared that said company, *its stock, its railroads and appurtenances, and all its property in this State, necessary or incidental to the full exercise of all the powers granted, not to include compresses and oil mills, shall be exempt from taxation*, for a period of twenty years from the completion of said railroad to the Mississippi river, not to extend beyond twenty-five years from the date of this Act, and, *when the period of exemption herein provided shall have expired, the property of said railroad company shall be taxed at the same rate as other property in this State.* All of said taxes to which the property of said company may be subjected in this State, whether for

county or State, shall be collected by the treasurer of this State and paid into the treasury, to be dealt with as the legislature may direct; *but said company shall be exempt from taxation by cities and towns.*"

The question presented by this case, is: Did the legislature by the last paragraph of this section intend to grant plaintiffs in error unconditional exemption from taxation by cities and towns?

It has heretofore been held by this court that the exemption above provided, as to State and county taxes, was conditional on the road reaching the Mississippi river.

Y. & M. V. R. R. Co. vs. Thomas, 132 U. S., 187.

Affirming the opinion of the State court.

Y. & M. V. R. R. Co. vs. Thomas, 65 Miss., 553.

In the Thomas case, supra., this court held, "In our opinion it cannot be doubted that the principal object of the grant to the company was the building of a line across the State from the Chicago Railroad to the Mississippi river."

Section 2 of the charter, expressly provides that one of the lines of the road is to reach the Mississippi river at or near a point opposite Arkansas City, if practicable, yet the company without any pretense that the road was ever constructed according to the terms of the charter and

without showing that it undertook or accomplished any of the work set out and declared by the preamble of the act of incorporation, "to be of great importance and in strict accordance with the policy and interests of this State", and without showing that the State received any part of the consideration mentioned in the preamble and act; contend that under the provisions of the charter, it is granted unconditional and perpetual exemption from municipal taxation.

Under this construction the court is called upon to consider separately and alone the concluding paragraph of section 8. This cannot be done.

A statute will be construed according to its object and spirit, although against the letter.

Painter vs. Trotter, 10 S. & M. (Miss.) 537.

"In the construction of a statute, the object is to get at its spirit and meaning, its design and scope, and that construction will be justified which evidently embraces the meaning and carries out the object of the law, although it be against the letter and grammatical construction of the act".

Dixon vs. Dal. 1 S. & M. (Miss.) 70.

In determining the proper construction of a statute, the entire legislation on the same subject matter, its policy and reason, as well as the text of the particular act, must be looked to.

Clements vs. Anderson, 46 Miss., 598.

Taking a reasonable view of the charter and reading the whole act together, it would appear, that provisions having been made under section 8, for the collection of State and county taxes by the State treasurer, and these taxes having been thus specially mentioned; and as there might arise a doubt as to whether municipal taxes were covered by the exemption, on the doctrine that the mention of one would exclude the other, and to make certain in express terms that municipal taxes were included in the grant, the clause, "but said company shall be exempt from taxation by cities and towns" was added.

Not that the company should, without reason or consideration, have perpetual and unconditional exemption, as it contends, but that it should likewise, that is, upon the terms and conditions before made in the section, be exempt from municipal as well as other taxes.

The purpose of the legislature in granting the exemption was to induce the building of the road to the Mississippi river, as held by this court and the state court in the Thomas case. It was a bonus offered for undertaking the difficult task set out in the preamble.

It cannot be that it was the purpose of the legislature to relieve the corporation from any of the burdens of taxation without some object or reason, and the apparent object and reason of the exemption was to induce the company to build

the road to the river, not only to open up that section of the country, but to bring the river and the railroad into competition as common carriers.

An act must be construed according to its reason and object.

Love vs. Taylor, 4 Cush. (Miss.) 567.

Grand Gulf Bk. vs. Archer, 8 S. & M., (Miss.) 151.

There is nothing in the act that leads to the conclusion that it was ever in the mind of the legislature to grant a perpetual and unconditional exemption.

The act speaks of but the term not to exceed twenty-five years, to be earned upon the road being constructed to the Mississippi river. Any other construction would make the act inharmonious.

It provides in section 8, that: "*when the period of exemption herein provided shall have expired, the property of said railroad company shall be taxed at the same rate as other property in this State.*" Not that it shall then pay State and county taxes alone, but that it "shall be taxed at the *same rate* as other property". Not that after the period of exemption shall have expired it shall pay a part of the taxes, but that it shall then bear its full share of all the burdens of taxation, "as other property in the State."

Again, the act provides for the exemption of the company's "stocks, its railroads and appur-

tenances and all its property necessary or incidental to the full exercise of all the powers herein granted, not to include compresses and oil mills". And if the last paragraph of section 8 is to be treated and considered as independent of the rest of the section, by its provision that "said company shall be exempt from taxation by cities and towns," the exemption would not only be perpetual and unconditional as to property held for railroad purposes, but general, exempting not only "its stocks, its railroads and appurtenances and all its property necessary or incidental to the full exercise of all the powers granted", but it would apply to exempt from municipal taxation, its property of every kind and description, including compresses and oil mills, expressly made subject to taxation by the preceeding part of the same section, as well as its express business, telegraph lines, storage and wharfage, all of which several kinds of business it is empowered to engage in by the terms of its charter.

"Statutes or charters exempting property, persons or corporations from the common burdens of taxation, are to be strictly construed; the intention of the legislature to grant the immunity claimed must be clear beyond a reasonable doubt, and the State must be given the benefit of every doubt arising as to the legislative intent."

Hoge vs. Ry. Co., 99 U. S., 348.

"A claim of exemption from county and mu-

nicipal taxation cannot be supported any more than a claim for State taxation, except upon language so strong, as that, fairly interpreted, no room is left for controversy."

Bailey vs. Magwire, 22 Wall (U. S.) 215.

The fourth assignment of error, goes to the correctness of the court's ruling in holding that under the constitution and laws of Mississippi, the municipal authorities of the city of Jackson had no power to grant exemption from municipal taxation.

This exemption is in violation of Section 20, Art. 12, Constitution of Mississippi of 1869, (which was in force at the date of the municipal ordinance), providing that taxation shall be equal and uniform throughout the State.

Under this provision the board of mayor and aldermen had no power by exemption to produce and bring about any kind of inequality.

State vs. Hannibal Ry. Co., 75 Mo., 208.

Brewer Brick Co. vs. Brewer, 62 Mo., 62.

State vs. Taylor, 48 Conn., 145.

State vs. Gracey, 11 Nev., 223.

Mark vs. Jones, 21 N. H., 293.

Hayslett vs. Mt. Vernon, 33 Iowa, 229.

Section 192 of the constitution of Mississippi, 1890, provides: that provision shall be made by general laws whereby cities and towns may grant certain exemptions, but there was no such power under the constitution of 1869.

For a better presentation of all the questions involved in this case on the merits we submit to the consideration of the court the opinion of the State court upon the first and second appeal, which are to be found in the record.

Should the court see proper to consider this case upon the merits, we respectfully ask that the judgment of the State courts be affirmed.

MARCELLUS GREEN,
Attorney for defendant in error.